

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 359

Citations Affected: IC 4-13.6-3-3.

Synopsis: Procurement and state public works. Proposed conference committee report for ESB 359. Provides that advance payment may be made for equipment or software acquired by a state agency, regardless of cost, with the prior approval of the budget agency under certain circumstances. Provides discretion to determine when retainage on a state public works contract should be placed in an escrow account. Provides that certain bid, performance, and payment bond and retainage requirements do not apply to railroad projects of a commuter transportation district. Requires contractors and subcontractors on state public works projects to implement employee drug testing programs. Establishes a negotiated bidding process for procurement of supplies by the executive branch of state government under which the purchasing agency may conduct discussions with bidders before awarding a contract under an invitation for bids to obtain a best and final offer. Requires a purchasing agency to maintain a bid register documenting the purchasing agency's negotiations with bidders. Makes technical changes to the statute authorizing reverse auctions. Eliminates the requirement for a purchasing agent in the executive branch to make a written determination as a condition to award a contract using an RFP. Permits a purchasing agency in the executive branch to use information obtained from an offeror's proposal in discussions with other offerors under certain circumstances. Provides that an information technology, life sciences, transportation, or logistics business that employs more than 100 persons or that has annual sales of more than \$5,000,000 is not eligible for a small business preference. Repeals a statute that prohibits the use of a reverse auction to purchase certain construction equipment. Makes technical changes. **(This conference committee report adds the language of the report relating to employee drug testing programs by public works contractors that are subject to collective bargaining agreements. Corrects a technical conflict between ESB 359 and SEA 247. Corrects technical errors.)**

Effective: July 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 359 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 4, delete lines 23 through 29, begin a new paragraph and insert:
- 2 **"Sec. 5. (a) A solicitation for a public works contract must**
- 3 **require each contractor that submits a bid for the work to submit**
- 4 **with the bid a written plan for a program to test the contractor's**
- 5 **employees for drugs.**
- 6 **(b) A public works contract may not be awarded to a contractor**
- 7 **whose bid does not include a written plan for an employee drug**
- 8 **testing program that complies with this chapter.**
- 9 **(c) A contractor that is subject to a collective bargaining**
- 10 **agreement shall be treated as having an employee drug testing**
- 11 **program that complies with this chapter if the collective bargaining**
- 12 **agreement establishes an employee drug testing program that**
- 13 **includes the following:**
- 14 **(1) The program provides for the random testing of the**
- 15 **contractor's employees.**
- 16 **(2) The program contains a five (5) drug panel that tests for**
- 17 **the substances identified in section 6(a)(3) of this chapter.**
- 18 **(3) The program imposes disciplinary measures on an**
- 19 **employee who fails a drug test. The disciplinary measures must**
- 20 **include at a minimum, all the following:**
- 21 **(A) The employee is subject to suspension or immediate**

- 1 **termination.**
- 2 **(B) The employee is not eligible for reinstatement until the**
- 3 **employee tests negative on a five (5) drug panel test certified**
- 4 **by a medical review officer.**
- 5 **(C) The employee is subject to unscheduled sporadic testing**
- 6 **for at least one (1) year after reinstatement.**
- 7 **(D) The employee successfully completes a rehabilitation**
- 8 **program recommended by a substance abuse professional if**
- 9 **the employee fails more than one (1) drug test.**
- 10 **A copy of the relevant part of the collective bargaining agreement**
- 11 **constitutes a written plan under this section."**
- 12 Page 4, line 42, delete "(92000 ng/ml)." and insert "**(2000 ng/ml).**".
- 13 Page 6, delete lines 13 through 22, begin a new paragraph and insert:
- 14 "SECTION 3. IC 4-13.6-3-3, AS AMENDED BY SEA 247-2006,
- 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 JULY 1, 2006]: Sec. 3. (a) There is established a certification board.
- 17 The following persons shall serve on the certification board:
- 18 (1) The ~~chief engineer~~ **director of engineering** of the department
- 19 of natural resources.
- 20 (2) The director.
- 21 (3) The building law compliance officer of the department of
- 22 homeland security.
- 23 (b) The board shall administer IC 4-13.6-4."
- (Reference is to ESB 359 as reprinted February 28, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 359

Signed by:

Senator Hershman
Chairperson

Representative Messer

Senator Smith S

Representative Mahern

Senate Conferees

House Conferees